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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its twelfth session

held at the Palais des Nations, Geneva,
from 18 to 22 October 1993

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INTRODUCTION

1. The Intergovernmental Group of Experts on Restrictive Business Practices held its twelfth session at the Palais des Nations, Geneva, from 18 to 22 October 1993.

2. In the course of the session, the Group held 4 plenary meetings and 7 informal meetings.

Opening statements

3. The **Deputy to the Secretary-General of UNCTAD** said that the session was taking place at a time when many countries were adopting market-oriented economic reforms and reforming their competition laws, as evidenced by the number of representatives of newly established competition authorities present. UNCTAD's technical assistance was contributing to this trend. There were now proposals to integrate competition principles into international trade rules. One such proposal was the "Draft International Antitrust Code: A GATT-MTO Plurilateral Trade Agreement", which would be the subject of consultations by the Group of Experts at the current session. The consultations procedure of the Group lent itself to discussions on such issues. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was a key input for strengthening international cooperation on competition and for bringing about greater convergence and compatibility of basic competition principles accepted by the international community and the international trading system. The goals set by the Cartagena Commitment - namely, to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade - were relevant to both the Intergovernmental Group of Experts and for the forthcoming third session of the United Nations Conference to Review All Aspects of the Set of Principles and Rules on Restrictive Business Practices (the Review Conference), to be held in 1995.

4. The **Director of the International Trade Division** drew attention to the main items on the agenda of the twelfth session, in particular the review of the operation of, and experience arising from, the Set of Principles and Rules, including the steps taken by States at the national or regional levels to meet their commitment to the Set. In this respect, great importance was attached to efforts by all countries, including developing countries and countries in transition, to adopt and enforce effectively competition legislation, as a concrete step towards creating a level playing field for competition at the international level.

5. He noted that the Intergovernmental Group of Experts had before it two studies prepared by the UNCTAD secretariat: one on "Concentration of market power through mergers, takeovers, joint ventures and other acquisitions of control and its effects on international markets in particular the markets of developing countries" (TD/B/RBP/80/Rev.2), which had been finalized taking into account the comments of member States on an earlier version of the study; and a new study on the role of competition policy in economic reforms in developing and other countries (TD/B/RBP/96), which had been prepared on the basis of an annotated outline approved by the Intergovernmental Group of Experts at its eleventh session. This study was especially relevant, as it was set in the context of the fundamental economic reforms taking place around the world motivated by a growing recognition

of the role of market forces, and hence of competition, in the efficient functioning of economies at all stages of development. In drawing attention to the conclusions of the study, he mentioned that appropriate coordination had been assured with the Ad Hoc Working Group on Privatization; moreover, the study would be available to the latter's forthcoming third session. Reciprocally, the present twelfth session on Restrictive Business Practices had before it two documents for submission to the third session of the Ad Hoc Working Group on Privatization, namely: "In-depth considerations of competition and the regulation of privatized monopolies" (TD/B/WG.3/11) and "Design, implementation and results of privatization programmes: A cross-country analysis of national experiences" (TD/B/WG.3/7/Rev.1).

6. As requested by the Intergovernmental Expert Group at its eleventh session, the secretariat had revised the checklist for the exchange of information and consultations, taking into account the comments of member States and had issued an updated directory of competition authorities (TD/B/RBP/78/Rev.2). Under the same agenda item, as had become customary at annual sessions, multilateral consultations were scheduled to take place on appropriate remedies for abuses of market power and on criteria for assessing fines for violations of competition laws, along with a presentation of a proposed "Draft International Anti-trust Code", suggested to become a "GATT-MTO Plurilateral Trade Agreement".

7. The secretariat had also prepared a revised draft of possible elements for articles of a model law or laws on Restrictive Business Practices (TD/B/RBP/81/Rev.2) as well as a new compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/RBP/94), containing the new laws of Italy, Jamaica and Venezuela. States members were invited to enrich the commentary on the model law or laws.

8. With respect to technical assistance in the area of competition policy, the secretariat had prepared a document describing UNCTAD activities in this area since the eleventh session of the Intergovernmental Group of Experts and setting out the views of Governments on technical assistance (TD/B/RBP/97).

9. The spokesman for **Group B** (Norway) regretted that all documents prepared for the Intergovernmental Group of Experts had not been made available in time and in all languages.

10. The representative of **China** commended the efforts made by the international community to strengthen the control of restrictive business practices, as well as the secretariat's contribution in this area, but stressed that much more was required in order to achieve the goals of the Set of Principles and Rules on Restrictive Business Practices for supporting development and eliminating barriers to trade. Developing countries, including China, had liberalized and reformed their economic policies, but needed to address competition issues in the areas of foreign investment and trade, including the restrictive trade practices of foreign firms as well as anti-dumping and countervailing measures. Such issues would need to be resolved by strengthening international cooperation, including through the work of the Intergovernmental Group of Experts.

11. The spokeswoman for the **Group of 77** (Algeria) stated that the Group of 77 was ready to contribute positively towards ensuring concrete results and a successful conclusion to the present twelfth session.

Chapter I

REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 3)

ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET:

(a) STUDIES ON RESTRICTIVE BUSINESS PRACTICES RELATED TO THE PROVISIONS OF THE SET OF PRINCIPLES AND RULES;

(b) INFORMATION AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES;

(c) THE MODEL LAW OR LAWS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, AND THE HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION;

(d) TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES

(Agenda item 4)

WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES

(Agenda item 5)

12. The representative of **Egypt** referred to his country's attachment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices; this had already been affirmed in previous sessions of the Intergovernmental Group of Experts. Structural adjustments and other economic reform measures undertaken by Egypt had proved successful, as had been recognized by the institutions and agencies concerned. The role of the private sector in export and import trade had been augmented.

13. Egypt had decided to implement comprehensive legislation to regulate restrictive business practices so that competition could play its part in the economy. With the structural adjustment of the production sector, including the reform of public enterprises now freed from ministerial controls, managers had been granted complete freedom concerning pricing, employment and investment policies and public enterprises were no longer subject to foreign-exchange budget allocations. In this connection, it was worthy of note, the recent ministerial shuffle had put the business sector under the supervision of one of the competent ministries, which reflected the importance of this sector with regard to further liberalization measures. Trade liberalization and elimination of monopolies were being vigorously pursued. The elimination of public sector monopoly over foreign trade had opened up competition between the public and private sectors and there was no longer any discrimination, even in back-to-back barter deals. Reform of Customs regulations was aimed at eliminating discrimination and enhancing the advantages of competition policy. Great progress had been made in this direction; today less than

10 per cent of products were subject to restrictions as compared to 35 per cent in 1984. Egypt was doing everything possible to pursue a free competition policy. To this end, it was very important to consolidate progress achieved within a framework of anti-restrictive business practices rules. Egypt reaffirmed its intention to pursue further economic liberalization so as to ensure competition. It was hoped that the rules and principles of competition would be applied in both developing and developed countries, particularly by transnational companies. Egypt also reaffirmed the importance of technical assistance programmes on applying the agreed rules and principles to restrictive business practices. He then called upon the Intergovernmental Group of Experts to extend its discussion to incorporate trade in services, in cooperation with the Standing Committee on Developing Services Sectors, given the importance of this subject for a number of countries.

14. The representative of the **Russian Federation** described the provisions of the law on competition and limitation of monopolies of 1991 and its implementation by the State Committee on Prevention of Monopolies, in the context of establishing a legislative basis for the transition to a market-oriented economy. The law was particularly intended to forestall agreements among dominant entities where these could result in a significant limitation of competition. Some 88 bodies with specific territorial competence had assisted in its preparation and review. It would consequently be amended to bring it in line with changing conditions, taking into account both local and international experience. Cooperation on competition matters was being undertaken with the countries of the Commonwealth of Independent States and with France, Germany, Japan, the United Kingdom and the United States of America.

15. The representative of **Canada** called attention to the principles and application of the Canadian Competition Act, which was aimed at achieving economic efficiency and competitive prices and goods, rather than addressing competition as an end in itself. Guidelines on different areas of competition law had been developed; many countries had found them to be useful references. The proper application of competition policy was a key element of framework laws facilitating economic activity. As more goods and services were traded internationally, policies had to be adjusted. Competition policy must ensure that private restrictive business practices did not replace national trade barriers but domestic policies should not unduly restrict competition. Globalization was shifting the focus of international anti-trust relations away from containment of frictions arising from extraterritorial application of anti-trust laws towards greater international cooperation on competition policy application. Competition policy concepts and action were converging. The North American Free Trade Agreement (NAFTA) included a chapter on competition. In the draft Uruguay Round texts, competition policy perspectives had been featured. Competition policy had been successfully applied as a market integration instrument by the European Community. Canada anticipated successful, timely conclusion of both the Uruguay Round and NAFTA. Canada had been the host to competition officers from Mexico and Russia, in fulfilment of the objectives of the UNCTAD Set and had participated along with Norway and Sweden in the UNCTAD seminar for CARICOM countries. In addition, it had also engaged in productive bilateral exchanges. There was a growing convergence of views regarding the need for serious application of competition policy. With reference to the late distribution of documents, he said that this would regrettably detract from the Group's discussions; ways and means should be examined to ensure that this situation did not recur.

16. The representative of **Switzerland** said that his country had undertaken a revision of its Competition Act of 1985, with a view to elaborating a draft law that would be broader in scope and contain criteria by which to control and prevent abusive trade practices. The draft law would define rules of conduct in greater detail, provide new legal arrangements covering rules of procedure, and establish new institutional structures, including a federal competition office responsible for enquiries, and an administratively independent Competition Council mandated to take decisions. The latter would have a broad field of competence, including the right to advise the Confederation and the Cantons on draft legislation affecting competition.

17. The representative of **Portugal** stated that the new Portuguese law expected to come into force on 1 January 1994 had already been approved by the Council of Ministers. It would respond to the deep changes that had occurred in the structure and functioning of the Portuguese economy as a result of liberalization, deregulation and privatization of important areas of the economic activity in line with European integration. The law was applicable to all economic activities exercised in the private, public and cooperative sectors. Like Community law and the national legislation of other countries, the new Portuguese law would apply to anti-competitive practices and abuses of a dominant position and would regulate for control of concentration.

18. In the area of technical assistance, Portugal had been promoting bilateral cooperation projects, mainly with Portuguese-speaking African countries. Besides the continuation of the ongoing programme with Angola, initiatives had also been launched in the areas of competition and restrictive business practices with Cape Verde and Mozambique.

19. The representative of **Germany** commended the initiative of the Chairman to devote as much time as possible to substantive discussions within informal meetings. Countries which had delegated experts from their capitals were especially gratified by this procedure. The search for appropriate remedies to the abuse of market power and criteria for assessing fines for violation of competition laws would benefit from this informal approach. Noting that several documents had not been available in due time, he said that his delegation regretted that it would not be in a position to discuss some of the issues in depth at the present stage.

20. The representative of **Peru** gave information on the recent legislative developments in competition rules in his country as well as the legal framework for their enforcement. In this context, he highlighted the adoption of Legislative Decree 701 against Monopolistic, Controlling and Restrictive Practices Affecting Free Competition, and the establishment, in November 1992, of the National Institute for the Safeguard of Competition and the Protection of Intellectual Property (INDECOPI). He highlighted the latter's tasks and responsibilities, describing its organization and competences. Peruvian law in this domain was fully in line with the recommendations contained in the Set of Principles and Rules for the Control of Restrictive Business Practices. In closing, he said that it was anticipated that the exchange of experiences on this subject during the informal discussions would be fruitful.

21. The representative of the **United States of America** expressed regret concerning the non-availability of certain documents prior to the session, and reiterated the regret voiced by the representative of Germany on this point. He declared support for the timetable for work outlined by the Chairman and the

proposal to hold informal discussions on substantive matters at the level of the contact group.

22. The representative of **India** stated that the enactment of the Monopolies and Restrictive Trade Practices Act (MRTP), in 1969, had provided the legal framework for control of restrictive business practices in his country. An independent MRTP Commission had been set up to enforce the provisions of this Act during the past 24 years. The Commission had handled several cases and delivered landmark judgements. Specific problems existed in India because of its vast size and the fact that a majority of the population who lived in remote rural areas were unaware of competition law. Other developing countries perhaps shared similar problems. For effective application of the Set in such situations, an extensive educational campaign was required so as to generate awareness among the people with regard to consumer rights and availability of redress mechanisms. The MRTP Commission had issued documentation for guidance of the public and it had also organized training of administrators in the various states. A number of voluntary agencies were also looking into consumer complaints against questionable trade practices harmful to competition. The 1969 Act was progressive in that it had been amended eight times in order to regulate the operation of the economic system, prevent the concentration of economic power and prohibit monopolistic, restrictive and unfair trade practices. The 1991 amendments to the Act removed all pre-entry restrictions on investment decisions of industrial concerns.

23. The representative of **China** described the recent law against unfair competition adopted on 2 September 1993 for entry into force on 1 December 1993. The new legislation was in conformity with the Set of Principles and Rules, and took into account both the specific situation of China and the experiences of other countries. It was aimed at guaranteeing the healthy development of a socialist market economy and encouraging and protecting fair competition, in the interest of enterprises and consumers. It proscribed unfair business practices by firms and such measures by government authorities as granting exclusive rights to firms or segregating local markets. The law also clarified the department responsible for its administration. Enactment of the law demonstrated the resolve of the Chinese Government to speed up the pace of economic legislation and reform, in line with its deepening reform and opening to the outside world. In formulating the new law, China had received technical assistance from UNCTAD and UNDP, and from a number of countries. Further cooperation with countries with experience in the area of effectively controlling restrictive business practices would be welcomed. The UNCTAD secretariat should also continue to explore the possibilities of providing technical assistance.

24. The representative of **Romania** gave a brief account of the progress made in his country towards transition to a market-oriented economy, begun in 1989. The Government was firmly committed to economic reform notwithstanding the difficulties faced. Most of the legal framework was now in place and ready for implementation. In February 1993 parliament had approved a revised economic reform programme that set out tighter macroeconomic policies and reaffirmed the Government's commitment to effective micro-economic reforms and industrial restructuring. A distinct chapter of this programme was devoted to the promotion of competition in the Romanian economy directly related to continued reduction of the absolute dominance of the State sector. Although various laws regulated competition issues, there was no comprehensive unifying competition policy that would be totally harmonized with the regulations of the European Community, hence the Government had submitted to the parliament a draft law on safeguarding competition, inspired by the legislation

of countries with a market-economy tradition and harmonized in line with regulations of the European Community, particularly articles 85 and 86 of the Treaty of Rome. In preparing this draft law, valuable assistance had been given by experts from OECD, EFTA, the Commission of the European Communities, as well as from competition authorities of Belgium, France, Germany and the United States. UNCTAD's Model Law or Laws and the Handbook on Restricted Business Practices Legislation had also been very useful in this regard.

25. The representative of **Jamaica** stated that the enactment of the Fair Competition Act in his country in March 1993 had represented the culmination of a three-year period of dialogue and consultation among various economic sectors. The Act prescribed remedies for problems anticipated with advancing liberalization and deregulation of the Jamaican economy, a process that had intensified over the past 15 years. The Fair Competition Act sought to achieve two objectives: (a) to create a competitive environment where market forces could compete freely and fairly; and (b) to provide consumers with specific benefits which they did not have before. The Act had wide application: to private as well as public sectors, and to both persons and businesses involved in the production of goods and services. The main problems facing Jamaica in terms of anti-competitive practices were price fixing, operation of cartels, collusive tendering and bid-rigging. The Competition Act dealt with these problems. Monopolies were not singled out for special treatment: in a small economy, firms had to achieve a certain size for profitable economies of scale. Hence it was not the structure which was addressed but rather behaviour. Bad behaviour would be punished. Abuse of a dominant market position would engender sanctions.

26. The representative of **Ghana** stated that his country had benefited from UNCTAD's technical assistance in the area of restrictive business practices. Ghana's Trade Practices Bill had already won government approval and was currently before the parliament for adoption. UNCTAD's technical assistance had been implemented under a three-phase programme which started with an introductory seminar on restrictive business practices, followed by preparation of a draft competition law, which was open for comment by local, foreign and UNCTAD experts. The final phase of UNCTAD's technical assistance was a successful seminar held for Ghana's business community in April 1993 to publicize the law. The assistance of experts from Germany and the United Kingdom in training Ghanian officials on the control of restrictive business practices had been greatly appreciated.

27. The representative of **Venezuela** expressed regret that it had not been possible to reflect on the documentation which was unavailable prior to the meeting. His delegation wished to associate itself with those who had spoken on this subject. He then outlined his country's competition policy, which had drawn upon that of others, including the United States and the European Community. Venezuela's competition policy aimed at economic liberalization: Free competition was a public good. The Law for the Promotion and Safeguarding of the Exercise of Free Competition had created a competition authority named "pro-Competencia". He summarized the Venezuelan experience concerning restrictive agreements, mergers, deregulation and natural monopolies, then highlighted the efforts of Pro-Competencia to publicize the principles of competition to the public sector and in entrepreneurial, consumer and academic circles, since it was impossible to uphold competition policy if the society concerned did not believe in it. Hence it was necessary to create a culture in favour of free competition. Venezuela would welcome the adoption of an international statute on competition that would regulate transfrontier practices; it could be undertaken in parallel with international

measures for addressing the new protectionism of certain countries which applied anti-dumping and anti-subsidy measures in a discriminatory fashion. In conclusion, he expressed appreciation for the technical cooperation provided by UNCTAD, as well as by the Governments of Germany, Spain and the United States.

28. The representative of **Argentina** referred to his country's new trade policy, which aimed at an open economy. Measures had been taken to liberalize prices, reduce tariff barriers and deregulate the economy. Although these measures would strengthen competition, they might at the same time provide an incentive to some economic agents to avoid the effects of competition. In this perspective, it was important to have legislation aimed at ensuring that a competitive system would prevail. He outlined his country's competition law, the powers of its Competition Commission, and recent legislative measures. There was now a need to amend the law, particularly in relation to procedures concerning agreements, determination of the relevant market, merger control, notifications, fines, divestiture and the identification of criminal offences. The Mercado Común del Sur (MERCOSUR) had decided to adopt a Common Statute on Competition for those cases in which competition had transborder effects; the member States of MERCOSUR were discussing the broad outlines of such a statute. Finally, he expressed appreciation for the work of UNCTAD on competition policy, which would be taken into account in the elaboration of relevant policy in Argentina.

29. The representative of the **Netherlands** stated that the competition policy regime in his country was based on the principle that enterprises were free to enter into cartels and free to concentrate and form a dominant position by way of mergers. Even abuses of a dominant position were not prohibited *a priori*. However, since the beginning of the 1990s, the Government had begun to change its economic policy of laissez-faire with respect to restrictive business practices in a rather drastic way and instituted a legislative programme to bring Dutch law in line with that of other European Community and OECD countries. This was being done not only for economic reasons; the Government was convinced that in an internationalizing, globalizing world, national enterprises were going to be punished or rewarded not only in terms of their own efficiency of production and distribution but also with regard to costs and quality of services and intermediate goods purchased from the so-called sheltered sectors of the economy. The only mechanism known that guaranteed the best quality and diversity at the lowest cost was competition. To this end several measures had been adopted. Among the short-term measures envisaged were prohibition against price-fixing, cartels and collusive-tendering. As for the medium-term, a new Competition Law would be drafted, based on general prohibition principles and reinforced by an adequate policy implementation infrastructure. Finally an assessment would be made of all legislation containing economic regulation.

30. The representative of **Italy** stated that the Italian competition authority had been increasingly active in the advocacy programme and had been aggressive in pursuing cases against dominant firms which abused their protected or public status or took advantage of their position to extend dominance over other markets. The authority had pressed for the abolition of monopoly concessions in markets which had evolved enough to make competition possible, and for setting limits on the powers of statutory monopolies. In this regard, particular emphasis had been placed on the telecommunications sector and on the ports and airports. Although the authority had examined many mergers, it had intervened in only a few. As regards restrictive agreements, intervention had mainly been directed against horizontal restrictive business practices. The competition law had been widely

publicized in the business community but even after deregulation and price liberalization, producers and distributors were still able to engage in restrictive business practices. Governments needed to monitor such behaviour. This was a problem that UNCTAD might investigate.

31. The representative of **Spain** said that Spanish Competition Law had remained unchanged since 1989. It has been developed through several decrees concerning notifications in the field of mergers and the adoption of bloc exception rules in line with the European Community regulations. Spanish competition authorities had favoured, in principle, the deregulation process rather than privatization. In this way attention was focused on the competitive behaviour of markets independently from the ownership of enterprises. A recent study carried out by the Tribunal for the Safeguard of Competition dealt with the competitive situation of various service sectors, identifying those in which regulation had created inefficiency in the allocation of resources. Finally, concerning technical cooperation, he cited the visit of Venezuelan officers to the premises of the Spanish competition authorities and expressed the wish for further cooperation on legislation and competition policy, particularly with those countries having close cultural links.

32. The representative of the **Russian Federation** provided a breakdown of the types of restrictive business practices against which her country's competition authority had undertaken enforcement action. Establishing competition rules in Russia in the context of transition towards a market economy was a complex task. It was now necessary to reform the law; this would include refining the concept of the market and of dominant position, as well as by strengthening sanctions. The study TD/B/RBP/80/Rev.2 had provided detailed and useful information on trends in international market concentration, foreign investment and the role of transnational firms, relating the effects of competition instruments to other policy instruments. A further study on this subject was urgent, as it was relevant to the question of links between competition and trade. Russia supported strengthening the relationship between competition rules and GATT. The study TD/B/RBP/96 was satisfactory and her Government would be submitting comments on it in the near future.

33. The representative of **Sri Lanka** drew attention to the great emphasis his Government had placed on creating a market economy and the serious encouragement it was giving to foreign investors. Recent amendments to the Fair Trading Commission Act of 1987 had introduced a pre-notification requirement for mergers. The amendments also gave the Commission new powers to examine merger situations on its own initiative. Activities of the Commission in the past year included an investigation of two monopolies over the production, distribution and sale of oxygen, and over the safety match industry, as well as identification of various monopoly situations regarding goods and services. Two complaints relating to "dumping" of liquid glucose and of steel had been investigated, but no action was deemed necessary. The study TD/B/RBP/96 had been very useful in examining the role of competition policy in economic reforms in developing and other countries. Three reports proposing reforms to Sri Lanka's Competition Law were under consideration and could be informally discussed by the Group of Experts.

34. The representative of **Poland** referred to proposed amendments to the Polish Antimonopoly Act, aimed at refining definitions of monopolistic and dominant positions, and setting out rules for merger control. UNCTAD's Model Law had contributed to the elaboration of these proposed amendments. Legislation on unfair

competition had recently been adopted. Extensive cooperation and/or consultations had been undertaken with Germany, the United Kingdom, United States, EC and OECD, as well as with countries from Central and Eastern Europe.

35. The representative of the **Republic of Korea** described recent changes in his country's competition law, aimed at mitigating the economic power of large corporate groupings known as "jaebol". Controls had been strengthened on cross-shareholding, intra-corporate loan guarantees and unfair provisions in subcontracting. Advocacy efforts aimed at deregulating the economy had been pursued. International cooperation and coordination on competition issues were necessary as it was important that every country should promote free and fair competition both internally and externally. To this end, dialogue on a common understanding of competition policy within UNCTAD and the OECD should be pursued.

36. The representative of **Ethiopia** stated that the adoption of a market economy model by the transitional government had led to the introduction of a number of important legislative measures. The Public Enterprise Proclamation No. 25 of 1992, which had given autonomy to public enterprises but had deprived them of the protection and subsidy to which they had been entitled in the past was one of the legislative measures which had proved successful. Other measures had been taken relating to labour and investment which had made a considerable contribution towards the successful implementation of Ethiopia's structural adjustment programme. While the Government had privatized some public enterprises it had on the other hand liquidated others. Attention was called to the question of developing private capital markets, which, both technically and financially, called for international assistance.

37. The representative of **France** praised the quality of the secretariat's documentation but deplored its lateness. He then went on to describe French competition law which was based on two fundamental principles: open competition and fair trade practices. Recent amendments to control abusive delays in payments of debts and to improve transparency in contractual obligations were cited. French competition policy was aimed at controlling restrictive business practices and publicizing competition principles. The activities of the competition authorities had greatly increased in recent years with efforts aimed at maintaining access to markets, preventing unfair competition and assuring consumer protection. These activities had been publicized in periodic reports and in seminars. In the light of the globalization of competition, the authorities had established two centres for international cooperation where personnel from other countries were trained to come to grips with competition issues.

Chapter II

CONSIDERATION OF TEXTS AND PROCEEDINGS AT THE CLOSING PLENARY

A. Consideration of texts

1. Draft agreed conclusions

38. At the 4th (closing) plenary meeting of the Intergovernmental Group of Experts, on 22 October 1993, the Chairman introduced draft agreed conclusions on agenda item 3 (a), (c) and (d) (TD/B/RBP/L.63), which had been approved by the Intergovernmental Group of Experts in an informal meeting.

2. Action by the Intergovernmental Group of Experts

39. At the same meeting, the Intergovernmental Group of Experts adopted the draft agreed conclusions introduced by the Chairman (TD/B/RBP/L.13). (For the text of the agreed conclusions, see annex I).

B. Closing statements

40. The representative of the **United States of America**, commenting on the fruitful discussions which had been held on the subject of competition issues and the important contributions made by the experts, commended the Chairman for his skill in leading the session to a successful conclusion.

41. The representative of **Peru** drew attention to the need for effective implementation of the norms governing restrictive business practices, in line with the Set of Principles and Rules for the Control of Restrictive Business Practices, particularly section E. Their implementation was in most cases dependent on the ability of national legislative and administrative authorities to take effective action in this area. Thus, institutional strengthening was particularly important. The agreed conclusions of the Intergovernmental Group of Experts at its twelfth session had addressed the need to develop coordinated action aimed at avoiding duplication of effort and maximizing results in the field of technical cooperation. He therefore suggested that, resources permitting, the UNCTAD secretariat should prepare a project document on regional technical assistance cooperation, outlining programmes at the governmental and intergovernmental level which could be used with a view to obtaining adequate funding for future programmes.

42. The spokesman for **Group B** (Norway) paid tribute to the constructive manner in which the Chairman had led the discussions. He also expressed appreciation for the high quality of the documentation prepared by the secretariat.

43. The spokesman for the **Asian Group** (Philippines) in congratulating the Chairman on his exemplary leadership, observed that the session had profited from the businesslike atmosphere which pervaded the informal discussions. This

opportunity for experts to share their ideas and analyse the various issues was directly attributable to the Cartagena Commitment and an improvement over the old system of intra-group dialogue.

44. The representative of **Germany** said that the future workability of the Intergovernmental Group of Experts should not be constrained by bureaucratic regulations of the Trade and Development Board concerning limitations on the number of agenda topics or on the length of documents covering the main items or impeding the timely dissemination of documents. His delegation appreciated the way in which the session had been organized to devote sufficient time to the multilateral and bilateral exchanges of views on competition-related issues, as embodied in the Set, as those exchanges were one of the main tasks of the Group.

45. The representative of **Argentina**, in wishing to be associated with previous speakers who had praised the Chairman's consummate skill, also voiced concern over the question of documentation. The specificity of the work and the high level of analysis evident in the documents prepared by the secretariat had an appreciable bearing on assuring a fruitful outcome to the sessions of the Group. Technical assistance was equally important and, to this end, it would be advantageous if the secretariat contacted regional development banks, particularly in Latin America, in order to draw up a list of regional technical cooperation projects which might have application to future programmes.

46. The representative of **China** expressed appreciation for the work of the Chairman and Bureau and noted that the secretariat had prepared valuable documentation for the session. Greater effort would be needed, however, to assure that in future all texts were available in timely fashion. The Intergovernmental Group of Experts offered an ideal forum to hold friendly exchanges of views on competition issues and to pursue the principles articulated by UNCTAD VIII. As China was moving towards a socialist market economy, it was particularly keen to take an active part in international exchanges of experience on the issues addressed by the Group and, as a developing country, it was especially interested in technical assistance cooperation related to implementation of the Set.

47. The representative of **France** spoke of the need to have the basic working papers available for study well in advance of the session, with a view to full participation by all delegations concerned, in the framework of the founding conventions of the United Nations and in the Spirit of Cartagena. As member countries met only once a year to treat the vital issues addressed by the Group, the question of documents was of particular relevance, especially in view of the high quality of the texts prepared by the secretariat for the session. It was hoped that the secretariat would have the means to carry out the entire programme of work agreed upon at the session.

48. The representative of **Canada** expressed satisfaction with the high caliber of the discussions at the session and the way in which participants had focused on issues of central importance. It was hoped that the secretariat would be able to resolve the documentation problems in future as the Intergovernmental Group of Experts constituted a unique and valuable forum in which to discuss the convergence of competition policy now under way in many countries.

49. The representative of the **Russian Federation** expressed full agreement with the praise voiced for the Chairman who had led the session through lively and valuable discussions. Likewise those delegations which had taken an active part

in stating their positions and views during the informal talks had contributed in great measure to the successful outcome. The concept of competition was relatively new to Russia. Thus the hope vested in the work of the Group for sharing its valuable practical experience on questions of foreign policy in relation to business practices was of great importance to countries embarking on economic reform in transition to a market economy.

50. The spokesman for the **Latin American Group** (Mexico) praised the Chairman for leading the session to a successful conclusion despite the difficulties experienced over the lack of documents.

51. The representative of the **United Kingdom** commended the secretariat for the high standards of the draft documents prepared for the session but expressed disappointment over the fact that not all of them were available for distribution in all the working languages before the session.

52. The spokesman for the **African Group** (Nigeria) expressed the desire to also be associated with the delegations which had praised the Chairman for his able leadership and the secretariat for the high quality of the documentation prepared for the session. His Group also welcomed the technical assistance on the design of rules and regulations to control restrictive business practices, which the UNCTAD secretariat had rendered to countries in the African region. Those countries which had benefited from this assistance were already making useful contributions as a result. The Group had also appreciated the presentation on the draft antitrust code and would welcome in future sessions more such international emphasis rather than strictly national concerns.

53. The **Chairman**, in bringing the session to a close, observed that the wealth of information exchanged by participants had enhanced the value of the debates. In the organization of the session the emphasis had been on informal meetings. In fact some 65 per cent of the meetings had been devoted to informal exchanges. The high rate of representation by experts from the various capitals had enriched the discussions on legislation, rules governing the Set of Principles for the control of restrictive business practices, technical assistance programmes and elements for incorporation in the work programme. The Group's views on the subject of documentation had been brought to the attention of the Secretary-General of UNCTAD and would be conveyed to the bodies and offices concerned in order to assure distribution of the documentation needed for the proper functioning of the Group in timely fashion before the next session. The thirteenth session was expected to discuss a possible agenda item on the mid-term review of all aspects of the Set of Principles and Rules as well as the multilateral elements of the Uruguay Round.

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the session

54. The twelfth session of the Intergovernmental Group of Experts on Restrictive Business Practices was opened on 18 October 1993 by Mr. Carlos Fortin, Deputy to the Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

55. At the 1st plenary meeting of its twelfth session, on 18 October 1993, the Intergovernmental Group of Experts elected the following Bureau:

Chairman:	Mr. Roberto Villambrosa	(Argentina)
Vice-Chairmen:	Mr. Jorge Fernández Baca	(Peru)
	Mr. Wyoso Prodjowarsito	(Indonesia)
	Mr. Youri B. Afanasiev	(Russian Federation)
	Mr. Hartwig Wangemann	(Germany)
	Mr. Edward Hand	(United States of America)
Rapporteur:	Mr. Abdeljebbar Brahime	(Morocco)

C. Adoption of the agenda and organization of work

(Agenda item 2)

56. Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/93 and Corr.1) as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

4. Activities relating to specific provisions of the Set:

   (a) Studies on restrictive business practices related to the provisions of the Set of Principles and Rules;

   (b) Information and consultations on restrictive business practices;

(c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

(d) Technical assistance, advisory and training programmes on restrictive business practices

5. Work programme on restrictive business practices

6. Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

7. Other business

8. Adoption of the report of the Intergovernmental Group of Experts.

D. Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

(Agenda item 6)

57. At its 4th (closing) meeting, on 22 October 1993, the Intergovernmental Group of Experts approved the draft provisional agenda for its thirteenth session (TD/B/RBP/L.62). (For the text of the provisional agenda, see annex II).

E. Membership and attendance

58. For the membership and attendance list, see annex III.

F. Adoption of the report of the Intergovernmental Group of Experts

(Agenda item 8)

59. At its 4th (closing) meeting, on 22 October 1993, the Intergovernmental Group of Experts adopted its draft report (TD/B/RBP/L.61 and Add.1) and authorized the Rapporteur to complete the report to reflect the proceedings of the closing plenary.

Annex I

AGREED CONCLUSIONS ADOPTED BY THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES AT ITS TWELFTH SESSION

The Intergovernmental Group of Experts on Restrictive Business Practices, having met at its twelfth session from 18 to 22 October 1993, agrees to the following conclusions:

A. Item 4 (a) - Studies

1. **The study on "Concentration of market power (TD/B/RBP/80/Rev.2), as finalized by the UNCTAD secretariat should be published;**

2. **The study on "The role of competition policy in economic reforms in developing and other countries" (TD/B/RBP/96) should be revised by the secretariat, taking into account the comments made during the current session of the Group and comments received from member States before 31 January 1994.**

B. Item 4 (b) - Information and Consultations

1. **The checklists contained in TD/B/RBP/78/Rev.2 should be finalized by the secretariat, taking into account the comments made at the current session of the Group and any comments received from member States before 31 January 1994;**

2. **An updated directory on competition authorities should be circulated well in advance of the thirteenth session of the Intergovernmental Group of Experts;**

3. **The Intergovernmental Group of Experts commends the consultations and exchanges of views that took place during the current session on (a) appropriate remedies for abuses of market power; (b) criteria for assessing fines for violations of competition laws; and (c) received presentation of an independent "Draft international antitrust code";**

4. **Consultations held under this item of the agenda should take place again at the next sessions of the Intergovernmental Group of Experts and countries from all regions should be encouraged to make presentations on subjects of their choice, provided these are made known to the secretariat sufficiently in advance to allow other delegations interested in the subject to prepare themselves.**

C. Item 4 (c) - Model Law or Laws and Handbook

1. **The secretariat should continue the elaboration of the commentary to the model law(s) in TD/B/RBP/81/Rev.2, taking into account the comments made during the current session and comments received from member States before 31 January 1994. To this end, member States are invited to make, as far as possible, concrete drafting proposals for**

additions relating to the treatment of specific issues under their own national competition legislation;

2. The secretariat should continue the compilation and updating of the Handbook on restrictive business practices legislation and those member States that have not done so to date, or which have adopted new or amending legislation, are invited to submit the text of their competition laws to the secretariat in one (or more) official languages of UNCTAD, as well as appropriate commentary to such legislations, according to the format contained in the introduction to TD/B/RBP/94.

D. Item 4 (d) - Technical assistance

The Intergovernmental Group of Experts

1. Calls upon intergovernmental organizations and financing programmes - as well as member States through voluntary financial and other contributions - to provide the appropriate resources for the activities mentioned below; and to inform the secretariat of UNCTAD on programmes under which application of technical assistance could be made;

2. Requests the UNCTAD secretariat to continue to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy to developing countries and to countries in transition, and to report on its activities so as to enable the Intergovernmental Group of Experts at its thirteenth session to evaluate these activities;

3. Calls upon intergovernmental organizations to coordinate and cooperate in the area of competition policy with a view to avoiding unnecessary duplication of work and to maximize results with existing limited resources.

E. Documentation

Taking into account the specificity of the work of the Intergovernmental Group of Experts and its mandate, which includes revision and updating of recurrent documents of a lengthy nature, the Intergovermental Group of Experts requests the Secretary-General of UNCTAD and appropriate bodies to consider the application of the rules on documentation with the necessary flexibility, so as to enable the Intergovernmental Group of Experts to fulfil its tasks.

Annex II

Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

1. Election of officers

2. Adoption of the agenda and organization of work

3. Studies related to the provisions of the Set and consultations on restrictive business practices

4. The Model Law or Laws for the Control of Restrictive Business Practices, and the Handbook on Restrictive Business Practices Competition Legislation

5. Work programme on restrictive business practices including technical assistance, advisory and training programmes on restrictive business practices, and preparation of the Third Review Conference

6. Draft provisional agenda for the fourteenth session of the Intergovernmental Group of Experts

7. Other business

8. Adoption of the report of the Intergovernmental Group of Experts

Annex III

MEMBERSHIP AND ATTENDANCE */

1. The following States members of UNCTAD were represented at the session:

Algeria
Argentina
Austria
Bolivia
Brazil
Bulgaria
Canada
Chile
China
Colombia
Côte d'Ivoire
Cuba
Denmark
Ecuador
Egypt
El Salvador
Ethiopia
France
Germany
Ghana
Greece
Hungary
India
Indonesia
Iran (Islamic Republic of)
Italy
Jamaica
Japan
Kenya
Libyan Arab Jamahiriya
Madagascar
Mexico
Morocco
Nepal
Netherlands
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Slovakia
Slovenia
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Thailand
Turkey
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Venezuela
Viet Nam
Zimbabwe

2. The European Community was also represented.

3. The United Nations Environment Programme was represented at the session.

4. The following specialized and related agencies were represented at the session:

International Monetary Fund
World Intellectual Property Organization

The General Agreement on Tariffs and Trade was also represented.

5. The following intergovernmental organizations were represented at the session:

Organisation for Economic Cooperation and Development
Organization of African Unity

6. The following non-governmental organizations were represented at the session:

General Category

International Bar Association
World Federation of United Nations Associations

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*/ For the list of participants, see TD/B/RBP/INF.31.

Annex IV

CHECKLIST OF DOCUMENTS

Document symbol	Title	Agenda item
TD/B/RBP/97	Technical Assistance on Restrictive Business Practices Note by the UNCTAD secretariat	4 (d)
TD/B/RBP/96	The role of competition policy in economic reforms in developing and other countries Study by the UNCTAD secretariat	4 (a)
TD/B/RBP/95	Replies by States and regional groupings on steps taken to meet their commitment to the Set of Principles and Rules Note by the UNCTAD secretariat	3
TD/B/RBP/94	Handbook on Restrictive Business Practices Note by the UNCTAD secretariat	4 (c)
TD/B/RBP/93 (and Corr.1 English only)	Provisional agenda and annotations	2
TD/B/RBP/81/Rev.2	Continued work on the elaboration of a model law or laws on restrictive business practices - Draft commentaries to possible elements for articles of a model law or laws Prepared by the UNCTAD secretariat	4 (c)
TD/B/RBP/80/Rev.2	Concentration of market power through mergers, take-overs, joint ventures and other acquisitions of control, and its effects on international markets, in particular the markets of developing countries Revised report by the UNCTAD secretariat	4 (a)
TD/B/RBP/78/Rev.2 (and Corr.1 English only)	Information and consultations on restrictive business practices: checklist for information and consultations and directory of restrictive business practices control authorities Note by the UNCTAD secretariat	4 (b)
TD/B/WG.3/7/Rev.1	Design implementation and results of privatization programmes: a cross-country analysis of national experiences Report by the UNCTAD secretariat	3
TD/B/WG/3/11	In-depth consideration of: (i) Competition and the regulation of privatized monopolies (ii) Social impact and socially-related support measures Issues paper by the UNCTAD secretariat	4

Annex IV

CHECKLIST OF DOCUMENTS
(continued)

Document symbol	Title	Agenda item
TD/B/RBP/L.61 and Add.1	Draft report of the Intergovernmental Group of Experts on Restrictive Business Practices on its twelfth session	8
TD/B/RBP/L.62	Draft provisional agenda for the thirteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices	6
TD/B/RBP/L.63	Draft conclusions of the Intergovernmental Group of Experts	3, 4, 5
TD/B/39(2)/7 TD/B/RBP/92	Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its eleventh session	
TD/B/RBP/INF.30	Restrictive Business Practices Information: I. Legislative and policy developments in the field of restrictive business practices	4 (a)

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